

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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RACHEL MARIE WHITTED,

Plaintiff,

v.

OMD TIMEKEEPER, *et al.*,

Defendants.

Case No. 3:21-cv-00255-MMD-CLB

ORDER

Plaintiff Rachel Marie Whitted brings this civil rights action under 42 U.S.C. § 1983 to redress constitutional violations that she claims she suffered while incarcerated at the Northern Nevada Correctional Center. (ECF No. 1-1.) On December 8, 2021, this Court ordered Whitted to update her address within 30 days. (ECF No. 3.) That deadline has expired without an updated address from Whitted, and her mail from the Court is being returned as undeliverable. (ECF No. 4.)

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of L.A.*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public’s interest in the expeditious resolution of litigation; (2) the Court’s need to manage its docket; (3) the risk of prejudice to Defendants; (4) the public policy favoring disposition of cases on their

1 merits; and (5) the availability of less drastic alternatives. *See In re Phenylpropanolamine*
2 *Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone*, 833 F.2d at 130).

3 The first two factors, the public's interest in expeditiously resolving this litigation
4 and the Court's interest in managing its docket, weigh in favor of dismissal of Whitted's
5 claims. The third factor, risk of prejudice to Defendants, also weighs in favor of dismissal
6 because a presumption of injury arises from the occurrence of unreasonable delay in filing
7 a pleading ordered by the Court or prosecuting an action. *See Anderson v. Air West*, 542
8 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
9 cases on their merits—is greatly outweighed by the factors favoring dismissal.

10 The fifth factor requires the Court to consider whether less drastic alternatives can
11 be used to correct the party's failure that brought about the Court's need to consider
12 dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
13 that considering less drastic alternatives *before* the party has disobeyed a court order
14 does not satisfy this factor); *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 n.4 (9th Cir.
15 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that “implicitly
16 accepted pursuit of last drastic alternatives prior to disobedience of the court's order as
17 satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled with the
18 warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*). Courts “need
19 not exhaust every sanction short of dismissal before finally dismissing a case, but must
20 explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779 F.2d 1421,
21 1424 (9th Cir. 1986).

22 Because this action cannot realistically proceed without the ability for the Court
23 and Defendants to send Whitted case-related documents, filings, and orders, the only
24 alternative is to enter a second order setting another deadline. But without an updated
25 address, the likelihood that the second order would even reach Whitted is low. Thus,
26 issuing a second order will only delay the inevitable and further squander the Court's finite
27 resources. Setting another deadline is not a meaningful alternative given these
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1 circumstances, and the fifth factor therefore favors dismissal. Having thoroughly
2 considered these dismissal factors, the Court finds that they weigh in favor of dismissal.

3 It is therefore ordered that this action is dismissed without prejudice based on
4 Whitted's failure to file an updated address in compliance with this Court's December 8,
5 2021, order. (ECF No. 3.)

6 The Clerk of Court is directed to enter judgment accordingly and close this case.
7 No other documents may be filed in this now-closed case. If Whitted wishes to pursue her
8 claims, she must file a complaint in a new case and provide the Court with her current
9 address.

10 DATED THIS 11th Day of January 2022.

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14 MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE
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